

ORIGINAL

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10 Attorneys for Defendant DOWNTOWN
11 LOS ANGELES ART WALK, INC.

FILED
LOS ANGELES SUPERIOR COURT

MAR 13 2013

JOHN A. CLARKE, CLERK
BY AMBER HAYES, DEPUTY

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 FOR THE COUNTY OF LOS ANGELES – CENTRAL DISTRICT

14 JIMMY VASQUEZ, an individual,
15 NATASHA VASQUEZ,

16 Plaintiffs,

17 v.

18 CITY OF LOS ANGELES; DOWNTOWN
19 LOS ANGELES ART WALK, INC., a
20 California Corporation; TRYELL
21 CHANDLER, an individual; GABRIELLE
22 JOHNSON, an individual; and DOES 1
23 through 50, inclusive,

24 Defendants.

Case No. BC495376

Hon. Frederick C. Shaller

NOTICE OF MOTION AND MOTION BY
DEFENDANT DOWNTOWN LOS
ANGELES ART WALK, INC. FOR
RECONSIDERATION OF ORDER
GRANTING PLAINTIFFS' EX PARTE
APPLICATION TO STRIKE ART
WALK'S DEMURRER AND TO
PROHIBIT ART WALK'S COUNSEL
FROM APPEARING ON ART WALK'S
BEHALF; MEMORANDUM OF POINTS
AND AUTHORITIES IN SUPPORT
THEREOF; DECLARATIONS OF
ROBYN C. CROWTHER, MONICA P.
MENDOZA AND JOE E. MOLLER AND
EXHIBITS

[Code Civ. Proc. § 1008]

Date: June 14, 2013

Time: 8:30 a.m.

Place: Department 46

Action Filed:

November 20, 2013

Trial Date:

None

RECEIPT #: 0CH503057083
DATE PAID: 03/13/13 04:03 PM
PAYMENT: \$60.00
RECEIVED: 310

CHECK: \$60.00
CASH: \$0.00
DEBIT: \$0.00
TOTAL: \$0.00

BC495376

DEFENDANT ART WALK'S MOTION FOR RECONSIDERATION

Fees paid on 1-14-13 \$435.00

CIT/CASE: BC495376
LEH/DEF#:

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1 **TO ALL PARTIES AND THEIR COUNSEL OF RECORD:**

2 **PLEASE TAKE NOTICE** that on June 14, 2013 at 8:30 a.m., or as soon thereafter as the
3 case may be heard, in Department 46 of this Court, located at 111 North Hill Street, Los Angeles,
4 California, Defendant Downtown Los Angeles Art Walk ("Art Walk") will and hereby does move
5 the Court for reconsideration of its February 26, 2013 order granting Plaintiffs' *ex parte* application
6 for an order striking Art Walk's demurrer and prohibiting Art Walk's counsel from appearing on its
7 behalf.

8 This Motion is made pursuant to California Code of Civil Procedure § 1008 on the grounds
9 that new and different facts and circumstances regarding Art Walk's status have been discovered.
10 Specifically, Art Walk learned for the first time on March 6, 2013 that it was not in substantial
11 compliance with the requirements of the Franchise Tax Board that would permit its corporate
12 powers to be revived. On March 7, 2013, Art Walk's counsel received a form from the Franchise
13 Tax Board listing all of the steps it must take to obtain a certificate of revivor which Art Walk
14 previously had not received, and it also learned of an expedited "walk-through revivor" process that
15 it intends to complete within the next two weeks. Prior to receiving that letter from the Franchise
16 Tax Board, Art Walk was not aware of these other deficiencies that had to be addressed, and had
17 mistakenly believed (based on previous communications with the Franchise Tax Board) that it had
18 submitted all of the paperwork necessary for revival of its corporation powers in October 2012.

19 In light of these new facts, Art Walk respectfully requests that the Court issue an order
20 permitting Art Walk and its counsel to appear in this action so that it may defend itself against
21 Plaintiffs' claims, including the filing of a Demurrer to Plaintiffs' Complaint. In the alternative, Art
22 Walk requests that the Court stay this action for forty-five (45) days so that any remaining issues
23 regarding Art Walk's status can be resolved.

24 This Motion is timely filed. Pursuant to Code of Civil Procedure § 1008(a), a motion for
25 reconsideration must be filed within ten days from service of notice of entry of the order. Pursuant
26 to Code of Civil Procedure § 1013, that deadline is extended by five days when the notice was
27 served by mail. Plaintiffs' counsel served Art Walk with notice of entry of the Court's February 26,
28 2013 order by mail on February 26, 2013, and this Motion is being filed and served within fifteen

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1 days from the date of service. The other requirements of Code of Civil Procedure § 1008(a) are
2 contained in the declarations accompanying this Motion.

3 This Motion is based upon California Code of Civil Procedure § 1008, this Notice, the
4 attached Memorandum of Points and Authorities, the attached Declarations of Robyn C. Crowther,
5 Monica Mendoza and Joe E. Moller and exhibits thereto, the Court's file pertaining to this matter,
6 and upon such further evidence and arguments as may be presented to the Court prior to and at the
7 hearing on this motion.

8 DATED: March 13, 2013

Respectfully submitted,

9 CALDWELL LESLIE & PROCTOR, PC
10 ROBYN C. CROWTHER
11 DAVID ZAFT

12
13 By



DAVID ZAFT

14 Attorneys for Defendant Downtown Los Angeles Art
15 Walk, Inc.

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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I. INTRODUCTION

3 In response to an *ex parte* application brought by Plaintiffs, the Court entered an order on
4 February 26, 2013 striking the Demurrer that Defendant Downtown Los Angeles Art Walk, Inc.
5 (“Art Walk”) had filed in response to Plaintiffs’ Complaint, and prohibiting Art Walk and its
6 counsel from participating in this action (the “Order”). The Order was based on the fact that the
7 Secretary of State had suspended Art Walk’s corporate powers. At the time Art Walk received
8 notice of the Court’s Order, Art Walk believed it was in substantial compliance with the
9 requirements of the Franchise Tax Board and would receive a certificate of revivor shortly. Art
10 Walk previously had submitted a form to the Franchise Tax Board regarding its exempt status
11 (Form 3500A), confirmed the Franchise Tax Board’s receipt of the form, and was waiting for the
12 form to be processed, a process that can take months but, Art Walk had been assured, would be
13 completed soon.

14 However, after the Court entered its Order, Art Walk redoubled its efforts to move this
15 process forward and, in so doing, it learned for the first time on March 6, 2013 that it must take
16 certain *additional* steps—submitting additional forms and paying certain penalties—before its
17 corporate powers will be revived. Art Walk had not previously been informed of these
18 requirements. Art Walk also learned of an expedited process (called a “walk-through revivor”) that
19 is available in certain situations, including where an entity is in litigation.

20 Art Walk is in the process of completing the required forms and scheduling a walk-through
21 revivor and expects to have its corporate powers restored sometime in the next two weeks.
22 Accordingly, Art Walk expects to have its corporate powers restored prior to the hearing on this
23 Motion. Based on these new facts and circumstances, and in light of Art Walk’s diligence in trying
24 to address the reasons for its suspension, Art Walk respectfully requests that the Court grant
25 reconsideration of, and revoke, its February 26, 2013 Order, and instead order that: (1) Art Walk
26 and its counsel are permitted to appear in this action and take any and all actions permitted to
27 parties involved in litigation; and (2) Art Walk is given leave to re-file its Demurrer.

28 If Art Walk is unable to complete the process for restoring its corporate powers prior to the

1 hearing on this Motion, and is not in substantial compliance of the Franchise Tax Board's
2 requirements, it requests in the alternative that the Court order a forty-five (45) day stay of this
3 action to permit it to address any remaining obstacles and obtain a certificate of revivor. Such a
4 stay is warranted and proper in these circumstances.

5 **II. NEW FACTS AND CIRCUMSTANCES HAVE ARISEN ABOUT THE REASONS**
6 **FOR THE SUSPENSION OF ART WALK'S LICENSE**

7 On February 26, 2013, the Court entered an order striking the Demurrer to Plaintiffs'
8 Complaint previously filed by Art Walk, and prohibiting Art Walk and its counsel from
9 participating in litigation activities while Art Walk remains a suspended corporation (the "Order").¹
10 Crowther Decl., ¶ 3. The Order was based on evidence that Plaintiffs presented in their *ex parte*
11 application showing that Art Walk's corporate status had been suspended by the Secretary of State.

12 At the time of the Court's order, Art Walk believed it had taken the necessary steps to
13 resolve the issue underlying its suspension. Declaration of Monica P. Mendoza ("Mendoza Decl."),
14 ¶ 7; Declaration of Joe E. Moller ("Moller Decl."), ¶ 4. The Secretary of State had suspended Art
15 Walk's license to do business in California because, although Art Walk received an Internal
16 Revenue Service's Section 501(c)(3) determination, it had not filed a formal request with the State
17 of California to obtain approval of its exempt status. Mendoza Decl., ¶ 5. Specifically, Art Walk
18 had not filed a Form 3500A ("Submission of Exemption Request"). *Id.* After Art Walk first
19 became aware of its status as a suspended corporation and the reason for the suspension, it promptly
20 submitted the Form 3500A to the Franchise Tax Board on or around October 17, 2012. *Id.* Monica
21 Mendoza, Art Walk's tax preparer, subsequently contacted the Franchise Tax Board on February
22 21, 2013 to ascertain the status of the Franchise Tax Board's review of the form. *Id.*, ¶ 6. The
23 person who spoke to Art Walk's accountant confirmed that the Franchise Tax Board received the
24 form on November 5, 2012 and that it was still being processed. *Id.* That person did not identify
25

26 ¹ A true and correct copy of the Court's Minute Order is attached as Exhibit 1 to the Declaration of
27 Robyn C. Crowther ("Crowther Decl."). A true and correct copy of the Plaintiffs' Notice of Ruling,
28 which was served by mail on February 26, 2012, is attached as Exhibit 2 to the Crowther
Declaration.

1 any other issues that needed to be addressed before Art Walk's corporate powers could be revived.
2 *Id.*

3 Because Art Walk believed that it did not owe any money to the State due to its exempt
4 status, and because Art Walk was not aware of any other reason for its suspension other than its
5 failure to file the Form 3500A (which it had rectified), Art Walk believed it had taken all of the
6 steps necessary for its status to be revived, and that administrative delays beyond Art Walk's
7 control were responsible for its continued status as a suspended corporation. *Id.*, ¶ 7; Moller Decl.,
8 ¶ 4. In that case, Art Walk would have substantially complied with the requirements for reviving its
9 status and should be permitted to continue defending against Plaintiffs' claims despite the State's
10 delay in processing the necessary form. *See Sade Shoe Co. v. Oschin & Snyder*, 217 Cal.App.3d
11 1509, 1515 (Ct. App. 1990) ("We therefore hold a corporation which has been suspended pursuant
12 to sections 23301 and/or 23301.5 may nonetheless prosecute or defend an action prior to its official
13 revivor provided there has been substantial compliance with the revival statute").

14 In response to Plaintiffs' *ex parte* application, Art Walk and its counsel redoubled Art
15 Walk's efforts to get confirmation from the Franchise Tax Board that Art Walk had addressed any
16 and all issues that were preventing its revival. Moller Decl., ¶ 5; Crowther Decl., ¶ 5. However,
17 when Art Walk's counsel contacted the Franchise Tax Board on March 6, 2013, she was told that
18 Art Walk also had to file a Form 199 ("Exempt Organization Annual Information Return") or Form
19 199N ("Annual Electronic Filing Requirement for Small Tax-Exempt Organizations (California e-
20 Postcard)") for 2009, 2010 and 2012, and pay certain penalties totaling \$183.77. Crowther Decl., ¶
21 5. On March 7, 2013, the Franchise Tax Board faxed a form to Art Walk's counsel, dated March 4,
22 2013, setting forth these requirements. Crowther Decl., ¶ 6 and Exh. 3. Art Walk subsequently
23 received a second form from the Franchise Tax Board (also dated March 4, 2013) that stated that
24 Art Walk only had to file a Form 199 or Form 199N for the years 2010 and 2012 only, and that it
25 did not have to pay any penalties. Moller Decl., ¶ 6 and Exh. 4. Setting aside the discrepancies
26 between the Franchise Tax Board forms, this was the first time that Art Walk was informed of *any*
27 of these additional issues that it needed to address in order to have its status reinstated despite
28 having contacted the Franchise Tax Board multiple times during the previous four months to check

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1 on the progress of its Form 3500A. Moller Decl., ¶ 7; Mendoza Decl., ¶ 9.

2 On March 6, 2013, Art Walk's counsel also learned of an expedited process (called a "walk-
3 through revivor") that an entity may utilize to revive its status in certain situations including when it
4 is involved in litigation. Crowther Decl., ¶ 5; Moller Decl., ¶ 8. Art Walk is in the process of
5 completing the required forms and gathering the documents necessary to complete the walk-through
6 revivor process, and it expects to schedule a walk-through revivor to take place sometime in the
7 next two weeks. Mendoza Decl., ¶ 10; Moller Decl., ¶ 8.

8 **III. THE NEW FACTS AND CIRCUMSTANCES ABOUT ART WALK'S STATUS**
9 **REQUIRE RECONSIDERATION OF THE COURT'S FEBRUARY 26, 2013 ORDER**

10 **A. *Despite Art Walk's Diligence in Pursuing Revival of Its Corporate Powers, It Was***
11 ***Not Informed of the Additional Required Steps until after the Court's Order***

12 As explained above and in the accompanying declarations, Art Walk has diligently sought
13 to restore its status and obtain a certificate of revivor even since it learned of the suspension. Art
14 Walk erroneously believed that once the State processed the Form 3500A that was submitted on
15 October 17, 2012, its powers would be revived. Ms. Mendoza followed up with the Franchise Tax
16 Board on Art Walk's behalf and was told that the form had been received and was being processed.
17 She was never informed of any additional steps that Art Walk had to take. As soon as Art Walk
18 discovered on March 6, 2013 that it must submit additional forms and, possibly, pay a penalty, it
19 immediately has taken steps to satisfy those requirements, and it expects to perform the walk-
20 through revivor sometime in the next two weeks. Despite Art Walk's diligence, and its multiple
21 inquiries the Franchise Tax Board, these additional requirements were not known to Art Walk until
22 after entry of the Court's February 26, 2013 Order.

23 **B. *Art Walk Should Be Permitted to Appear in this Action and to File a Response to***
24 ***Plaintiffs' Complaint***

25 As explained above, Art Walk expects to have the suspension fully resolved and its status
26 restored sometime in the next two weeks, and at any rate, prior to the hearing on this Motion. Once
27 Art Walk's corporate powers are revived, it may proceed with its defense of Plaintiffs' claims and
28 any of the acts it took previously are validated. *See Ctr. for Self-Improvement & Cmty. Dev. v.*

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1 *Lennar Corp.*, 173 Cal.App.4th 1543, 1553 (2009) (“[s]ubsequent corporate revivor retroactively
2 validates actions in the course of litigation”); *Peacock Hill Assn. v. Peacock Lagoon Constr. Co.*, 8
3 Cal.3d 369, 373-74 (1972) (same); *Bourhis v. Lord*, __ P.3d __, 2013 WL 781582, *5-6 (Cal. Mar.
4 4, 2013) (company’s filing of notice of appeal while suspended was deemed valid and timely
5 following revival of corporation). As one court put it, upon receipt of a certificate of revivor, “[t]he
6 legal rights of a suspended corporation are then revived, as an unconscious person is revived by
7 artificial respiration.” *Benton v. County of Napa*, 226 Cal.App.3d 1485, 1490 (1991).

8 Thus, as soon as Art Walk’s status is restored, Art Walk and its counsel should be permitted
9 to appear in this litigation, file a responsive pleading, take and respond to discovery, and enjoy all
10 of the other rights that entities possess that are registered with the Secretary of State and that may
11 conduct business in the State. Once Art Walk receives proof of its restored status from the State, it
12 will file notice of this fact with the Court and serve all of the parties who have appeared. At that
13 point, Art Walk’s counsel also will contact Plaintiffs’ counsel to meet and confer regarding a
14 stipulation and order that will provide the relief Art Walk seeks in this Motion in order to avoid
15 further burdening the Court.

16 **C. In the Alternative, the Court Should Stay this Action for Forty-Five Days so that**
17 **Art Walk Can Address Any Remaining Issues Regarding Its Status**

18 If Art Walk is unable to comply with the requirements necessary to revive its status before
19 the hearing on this Motion, Art Walk requests in the alternative that the Court stay this action for
20 forty-five (45) days. A stay is warranted based on Art Walk’s diligence in attempting to obtain the
21 revival of its corporate powers and in order to prevent any further attempt by Plaintiffs’ to seek
22 entry of Art Walk’s default.

23 Given Art Walk’s diligence and its continuing attempts to revive its powers, a brief stay, if
24 necessary, should be granted. “When a corporation’s suspended status ‘comes to light during
25 litigation, the normal practice is for the trial court to permit a short continuance to enable the
26 suspended corporation to effect reinstatement ... to defend itself in court.’” *Cadle Co. v. World*
27 *Wide Hospitality Furniture, Inc.*, 144 Cal.App.4th 504, 512-13 (2006) (quoting *Timberline, Inc. v.*
28 *Jaisinghani*, 54 Cal.App.4th 1361, 1366 (1997)); see also *Color-Vue, Inc. v. Abrams*, 44

1 Cal.App.4th 1599, 1606 (1996) (abuse of discretion not to grant trial continuance to permit
2 suspended corporation to obtain certificate of revivor).

3 Art Walk requests this alternative relief to ensure that Plaintiffs do not attempt to obtain
4 entry of its default prior to the revival of Art Walk's corporate powers. Plaintiffs unsuccessfully
5 attempted such an action once already in the hopes of obtaining a judgment against Art Walk
6 without having to proceed on their claims based on the merits. Given Art Walk's diligence and the
7 temporary and technical nature of its suspension, Plaintiffs should not be afforded a further
8 opportunity to obtain Art Walk's default. *See Traub Co. v. Coffee Break Serv., Inc.*, 66 Cal.2d 368,
9 370 (1967) (claim or defense regarding lack of capacity of suspended corporation is "a plea in
10 abatement which is not favored in law [and] is to be strictly construed").

11 **IV. CONCLUSION**

12 For the foregoing reasons, Art Walk respectfully requests that the Court grant this Motion
13 and order that: (1) Art Walk and its counsel are permitted to appear in this action and take any and
14 all actions permitted to parties generally involved in litigation in this court; and (2) Art Walk shall
15 file a responsive pleading to Plaintiffs' Complaint within fourteen (14) days following service of
16 notice of entry of this Order.

17 If, for some reason, Art Walk is unable to complete the steps required for restoring its
18 corporate powers, it requests a forty-five (45) day stay of this action in the alternative to permit it to
19 address any remaining obstacles and obtain a certificate of revivor.

20 DATED: March 13, 2013

Respectfully submitted,

21 CALDWELL LESLIE & PROCTOR, PC
22 ROBYN C. CROWTHER
23 DAVID ZAFT

24 By 
25

DAVID ZAFT

26 Attorneys for Defendant DOWNTOWN LOS
27 ANGELES ART WALK, INC.
28

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DECLARATION OF ROBYN C. CROWTHER

03 / 13 / 2013

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1 through revivor" because it is in litigation. I also learned from a representative of the Franchise
2 Tax Board that Art Walk had to file additional forms and pay certain penalties over and beyond
3 the submission of the Form 3500A. I understand that Art Walk had not previously been told of
4 these additional requirements.

5 6. On March 7, 2013, I received a form from the Franchise Tax Board, dated March
6 4, 2013, which set forth these additional requirements. A true and correct copy of this form is
7 attached hereto as Exhibit 3. I understand that Art Walk subsequently received a second form
8 from the Franchise Tax Board (also dated March 4, 2013) setting forth slightly different
9 requirements, including that it did not have to pay any penalties. A true and correct copy of this
10 second form is attached hereto as Exhibit 4.

11 7. I understand that Art Walk is in the process of completing the required forms and
12 gathering the documents necessary to complete the walk-through revivor process, and it expects
13 to schedule a walk-through revivor to take place sometime in the next two weeks.

14 I declare under the penalty of perjury under the laws of the State of California and the
15 laws of the United States that the foregoing is true and correct and that this Declaration was
16 executed on March 13, 2013, at Los Angeles, California.

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19 ROBYN C. CROWTHER
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03/13/2013

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 02/26/13

DEPT. 46

HONORABLE FREDERICK C. SHALLER

JUDGE

F. ROJAS

DEPUTY CLERK

HONORABLE
EX PARTE

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

R. JOHNSON/C.A.

Deputy Sheriff

NONE

Reporter

8:30 am

BC495376

Plaintiff
Counsel

JONATHAN DENNIS (X)

JIMMY VASQUEZ ET AL
VS

Defendant
Counsel

NO APPEARANCE

CITY OF LOS ANGELES ET AL

170.6 CCP AS TO JUDGE HOLLY KEN

NATURE OF PROCEEDINGS:

PLAINTIFFS' EX PARTE APPLICATION TO STRIKE DEFENDANT
DOWNTOWN LOS ANGELES ART WALK, INC.'S DEMURRER TO
PLAINTIFFS' COMPLAINT;

Matter is called for a hearing.

The ex parte application is granted.

Defendant Downtown Los Angeles Art Walk, Inc.'s
Demurrer to Plaintiffs' Complaint set for hearing on
April 3, 2013, is stricken and taken off calendar.

Defendant Downtown Los Angeles Art Walk, Inc.,
including its counsel, may not participate in any
litigation on this action while Defendant remains
a suspended California corporation.

Counsel for Plaintiff is to give notice.

EX.1

02/26/2013

03/13/2013

ROSEN ♦ SABA, LLP
468 North Camden Drive, Third Floor
Beverly Hills, California 90210

03/13/2013

1 **ROSEN ♦ SABA, LLP**

2 RYAN D. SABA, ESQ. (State Bar No. 192370)

3 JONATHAN S. DENNIS, ESQ. (State Bar No. 249554)

4 468 North Camden Drive, Third Floor

5 Beverly Hills, California 90210

6 Telephone: (310) 285-1727

7 Facsimile: (310) 285-1728

8 Attorneys for Plaintiffs,

9 JIMMY VASQUEZ and

10 NATASHA VASQUEZ

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

12 **FOR THE COUNTY OF LOS ANGELES - CENTRAL DISTRICT**

13 JIMMY VASQUEZ, an individual,)

14 NATASHA VASQUEZ, an individual,)

15 Plaintiffs,

16 vs.

17 CITY OF LOS ANGELES; DOWNTOWN)

18 LOS ANGELES ART WALK, INC., a)

19 California Corporation; TRYELL)

20 CHANDLER, an individual; GABRIELLE)

21 JOHNSON, an individual; and DOES 1)

22 through 50, inclusive,)

23 Defendants.

Case No.: BC495376

Honorable Frederick C. Shaller

NOTICE OF RULING RE EX PARTE

APPLICATION TO STRIKE

DEFENDANT DOWNTOWN LOS

ANGELES ART WALK, INC.'S

DEMURRER TO PLAINTIFFS'

COMPLAINT

Hearing Date: February 26, 2013

Hearing Time: 8:30 a.m.

Department: 46

Complaint Filed: November 8, 2012

Case Management

Conference Date: March 20, 2013

Trial Date: Not yet set

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1 **TO THIS HONORABLE COURT, ALL PARTIES AND THEIR ATTORNEYS**
2 **OF RECORD HEREIN:**

3 **PLEASE TAKE NOTICE** that on February 26, 2013, at 8:30 a.m. a hearing regarding
4 Plaintiff's *ex parte* application to strike Defendant Downtown Los Angeles Art Walk, Inc.'s
5 demurrer to Plaintiffs' Complaint and an order prohibiting Downtown Los Angeles Art Walk,
6 Inc.'s counsel from appearing on behalf of a suspended corporation, was held in department
7 46 of the above-entitled Court, the honorable Frederick C. Shaller presiding. Jonathan S.
8 Dennis, Esq. of Rosen Saba, LLP appeared on behalf of Plaintiffs Jimmy and Natasha
9 Vasquez. No other appearances were made.

10 After considering the *ex parte* application filed by Plaintiffs, and good cause appearing,
11 the Court ordered as follows:

- 12 • Defendant Downtown Los Angeles Art Walk, Inc.'s Demurrer to
13 Plaintiffs' Complaint set for hearing on April 3, 2013, is stricken and off
14 calendar.
- 15 • Defendant Downtown Los Angeles Art Walk, Inc., including its counsel,
16 may not participate in any litigation activities while it remains a
17 suspended California corporation.

18 Plaintiffs' counsel is to give notice of this order.

19
20 DATED: February 26, 2013

ROSEN ♦ SABA, LLP

21
22 By: 

23 RYAN D. SABA, ESQ.
24 JONATHAN S. DENNIS, ESQ.
25 Attorneys for Plaintiffs,
26 JIMMY VASQUEZ and
27 NATASHA VASQUEZ
28

ROSEN ♦ SABA, LLP
468 North Camden Drive, Third Floor
Beverly Hills, California 90210

03 / 13 / 2013

PROOF OF SERVICE

STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

ss

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is: 468 North Camden Drive, Third Floor, Beverly Hills, California 90210.

On February 26, 2013, I served the foregoing document described as: **NOTICE OF RULING RE EX PARTE APPLICATION TO STRIKE DEFENDANT DOWNTOWN LOS ANGELES ART WALK, INC.'S DEMURRER TO PLAINTIFFS' COMPLAINT** on the interested parties in this action by placing a true copy thereof enclosed in sealed envelopes addressed as follows:

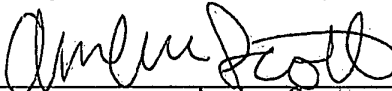
Carmen A. Trutanich, Esq., City Attorney Gary G. Geuss, Esq., Chief Asst. City Attorney Anthony M. Miera, Esq., Asst. City Attorney 200 N. Main Street, City Hall East, 6 th Floor Los Angeles, CA 90012	Attorneys for Defendant/Cross-Complainant City of Los Angeles Tel: (213) 978-6943 Fax: (213) 978-8789
Robyn C. Crowther, Esq. David Zaft, Esq. CALDWELL LESLIE & PROCTOR, PC 725 S. Figueroa St., 31st Floor Los Angeles, CA 90017-5524	Attorneys for Defendant Downtown Los Angeles Art Walk: Tel: (213) 629-9040 Fax: (213) 629-9022

☒ By Mail -

☒ As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Beverly Hills, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

☒ STATE I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on **February 26, 2013**, at Beverly Hills, California.


Amber Scott

03/13/2013



STATE OF CALIFORNIA
FRANCHISE TAX BOARD

Date :03/07/13

FACSIMILE TRANSMITTAL COVER SHEET

CONFIDENTIALITY NOTE:

This telecopy may contain confidential and / or legally privileged information and is intended only for the use of the individual or entity to whom it is addressed. If you are not the intended recipient, the employee, or agent responsible for delivering this telecopy to the intended recipient, be advised that any copying dissemination, distribution, or disclosure of information from this telecopy is strictly prohibited. Persons disclosing confidential information are subject to penalties under applicable law.

If you have received this telecopy in error, please notify the sender immediately by telephone and mail the entire facsimile message back to us at the address listed on the attached document.

Please deliver the following page(s)

TO:

NAME: Robin_Crowther

FAX NO: 12136299022

SUBJECT: 3211239.docx

FROM:

NAME: Dennis

UNIT: Franchise Tax Board

FAX NO: 916-843-2374

PHONE NO: 916-845-5567

Number of pages faxed (including this page): 3

Comments:

See attached document(s)

03/13/2013

Ex.3



STATE OF CALIFORNIA
EXEMPT ORGANIZATIONS UNIT F120
FRANCHISE TAX BOARD
PO BOX 1286
RANCHO CORDOVA CA 95741-1286

Date: 3/4/2013

In reply refer to 755: DMC

Corporation Number: 3211239

Exempt Organization Revivor Requirements

DOWNTOWN LOS ANGELES ART WALK
411 S MAIN ST # M102
LOS ANGELES CA 90013-1316

Corporation Name: DOWNTOWN LOS ANGELES ART WALK

On **7/2/2012** this corporation was suspended. Follow these instructions to revive to good standing and avoid tax-exempt status revocation:

File forms indicated below.

File **FTB 3557E**, *Application for Certificate of Revivor*.

File a **Statement of Information** with the Secretary of State. Go to **sos.ca.gov** to electronically file or download form.

- X Form 199**, *Exempt Organization Annual Information Return*, or FTB 199N, *Annual Electronic Filing Requirement for Small Tax-Exempt Organizations (California e-Postcard)* if the gross receipt 3-year average is \$25,000 or less for tax years beginning 2010, or a financial statement that shows all income and expenses for tax years prior to 2010. Pay \$65 for each Form 199 filed. We will send a bill for any interest due.

Tax Years: 06/09 06/10 06/12

Form 100, *Corporation Franchise or Income Tax Return*, or if the taxable income is \$100 or less, a financial statement that shows all income and expenses. Calculate and pay any tax, penalties, and interest due.

Tax Years:

Form 109, *Exempt Organization Business Income Tax Return*, or if the taxable income is \$1,000 or less, a financial statement that shows all income and expenses. Calculate and pay any tax, penalties, and interest due.

Tax Years:

Pay the outstanding balance due on forms previously filed or penalties imposed.

Form 199: 06/09 \$70.19 06/10 \$68.38 06/12 \$45.20

Form 100:

Form 109:

SOS:

Due Date

Comply with these requirements by **4/30/2013**.

Filing fees are based upon the gross receipts. See the instructions for form 199 for thresholds for filing. The \$56 rush fee is to be a separate certified funds payment than the rest of the amounts due. All payments will need to be certified funds. The amounts due above are based on the assumption that a return is due and the interest is calculated to 03/15/2013. Call with any questions. Dennis

Exempt Organizations Unit
Phone: 916.845.4171
Fax: 916-843-2374

Failure to Revive

If your corporation does not comply with the revivor requirements, we may:

- Revoke your corporation tax-exempt status (California Revenue and Taxation Code (R&TC) Section 23777).
- Issue a tax assessment.
- Assess a penalty of 25 percent of the tax assessment for failure to provide the information we requested.

Contract Voidability

Complete FTB 2518BC, *Application of Relief from Contract Voidability*, to purchase relief from contract voidability. Go to ftb.ca.gov and search for **contract voidability** for more information. Return a copy of this notice with all correspondence and include contact name, address, and daytime telephone number.

Amnesty Penalty

We did not include amnesty penalties in the above requirements. We send a bill if the amnesty penalty applies.

EFT Penalty

If your organization meets the requirements of the Electronic Funds Transfer Program, all payments must be remitted by electronic fund transfer (EFT) or Web Pay to avoid the penalty. If you pay by other means, we impose a penalty of 10 percent of the amount paid. For more information, get FTB Pub. 3817, *Electronic Funds Transfer Information Guide*, at ftb.ca.gov, or call us at 800.852.2753. (R&TC Section 19011)

Contact Information

Send all returns and payments to:
EXEMPT ORGANIZATIONS UNIT MS F120
FRANCHISE TAX BOARD
PO BOX 1286
RANCHO CORDOVA CA 95741-1286

03/13/2013

03/13/2013



STATE OF CALIFORNIA
EXEMPT ORGANIZATIONS UNIT IS F120
FRANCHISE TAX BOARD
PO BOX 1286
RANCHO CORDOVA CA 95741-1286

Date: 3/4/2013

In reply refer to 755: DMC

Corporation Number: 3211239

Exempt Organization Revivor Requirements

DOWNTOWN LOS ANGELES ART WALK
411 S MAIN ST # M102
LOS ANGELES CA 90013-1316

Corporation Name: DOWNTOWN LOS ANGELES ART WALK

On 7/2/2012 this corporation was suspended. Follow these instructions to revive to good standing and avoid tax-exempt status revocation:

File forms indicated below.

File **FTB 3557E**, *Application for Certificate of Revivor*.

File a **Statement of Information** with the Secretary of State. Go to sos.ca.gov to electronically file or download form.

- X Form 199**, *Exempt Organization Annual Information Return*, or **FTB 199N**, *Annual Electronic Filing Requirement for Small Tax-Exempt Organizations (California e-Postcard)* if the gross receipt 3-year average is \$25,000 or less for tax years beginning 2010, or a financial statement that shows all income and expenses for tax years prior to 2010. Pay \$65 for each Form 199 filed. We will send a bill for any interest due.

Tax Years: 06/10 06/12

Form 100, *Corporation Franchise or Income Tax Return*, or if the taxable income is \$100 or less, a financial statement that shows all income and expenses. Calculate and pay any tax, penalties, and interest due.

Tax Years:

Form 109, *Exempt Organization Business Income Tax Return*, or if the taxable income is \$1,000 or less, a financial statement that shows all income and expenses. Calculate and pay any tax, penalties, and interest due.

Tax Years:

Pay the outstanding balance due on forms previously filed or penalties imposed.

Form 199:

Form 100:

Form 109:

SOS:

Due Date

Comply with these requirements by **4/30/2013**.

Exempt Organizations Unit
Phone: 916.845.4171

06/13/2013

EX 4

Failure to Revive

If your corporation does not comply with the revivor requirements, we may:

- Revoke your corporation tax-exempt status (California Revenue and Taxation Code (R&TC) Section 23777).
- Issue a tax assessment.
- Assess a penalty of 25 percent of the tax assessment for failure to provide the information we requested.

Contract Voidability

Complete FTB 2518BC, *Application of Relief from Contract Voidability*, to purchase relief from contract voidability. Go to ftb.ca.gov and search for **contract voidability** for more information. Return a copy of this notice with all correspondence and include contact name, address, and daytime telephone number.

Amnesty Penalty

We did not include amnesty penalties in the above requirements. We send a bill if the amnesty penalty applies.

EFT Penalty

If your organization meets the requirements of the Electronic Funds Transfer Program, all payments must be remitted by electronic fund transfer (EFT) or Web Pay to avoid the penalty. If you pay by other means, we impose a penalty of 10 percent of the amount paid. For more information, get FTB Pub. 3817, *Electronic Funds Transfer Information Guide*, at ftb.ca.gov, or call us at 800.852.2753. (R&TC Section 19011)

Contact Information

Send all returns and payments to:
EXEMPT ORGANIZATIONS UNIT MS F120
FRANCHISE TAX BOARD
PO BOX 1286
RANCHO CORDOVA CA 95741-1286

03/13/2013



State of California
Franchise Tax Board

PO Box 1286
Rancho Cordova CA 95741-1286

DOWNTOWN LOS ANGELES ART WALK
411 S MAIN ST STE M-102
LOS ANGELES CA 90013

Date: 03.02.13
Case: 26560504429678690
Case Unit: 26560504429678693
In reply refer to: 760:MLO:F120

Regarding : Tax-Exempt Status
Organization's Name : Downtown Los Angeles Art Walk
CCN : 3211239
Purpose : Charitable
R&TC § : 23701d
Form of Organization : Affirmation Incorporated
Accounting Period Ending : 06/30
Tax-Exempt Status Effective : 06/22/2009

Exempt Acknowledgement Letter

We have received your federal determination letter that shows tax exemption under Internal Revenue Code (IRC) Section (§) 501(c)(3). Under California law, Revenue and Taxation Code (R&TC) §23701d(c)(1) provides that an organization is exempt from taxes imposed under Part 11 upon submission of the federal determination letter approving the organization's tax-exempt status.

Generally, the effective date of an organization's California tax-exempt status is the same date as the federal tax-exempt status under IRC §501(c)(3).

To retain tax-exempt status, the organization must be organized and operating for nonprofit purposes within the provisions of the above R&TC section. An inactive organization is not entitled to tax-exempt status.

In order for us to determine any effect on the tax-exempt status, the organization must immediately report to us any change in:

- Operation
- Character
- Purpose
- Name
- Address

For filing requirements, get Pub. 1068, *Exempt Organizations - Filing Requirements and Filing Fees*. Go to ftb.ca.gov and search for 1068.

03/13/2013

This exemption is for state franchise or income tax purposes only. For information regarding sales tax exemption, contact the State Board of Equalization at 800.400.7115, or go to their website at boe.ca.gov.

Monalisa Ornelas
Telephone: 916.845.4171
Fax: 916.843.5884

03/13/2013

DECLARATION OF MONICA P. MENDOZA

03/13/2013

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1 revived. I was not told about any other problems with Art Walk's status at that time. On or
2 about October 17, 2012, I mailed the Form 3500A to the Franchise Tax Board.

3 6. On February 21, 2013, I followed up with the Franchise Tax Board to inquire
4 about the status of its review of Art Walk's Form 3500A. The person I spoke with confirmed
5 that the Franchise Tax Board had received the form on November 5, 2012 and that it still was
6 being processed. The person informed me that it typically takes 4-6 weeks to process, but that
7 because of the delay, the form would be approved soon, and that Art Walk would receive a letter
8 in approximately three weeks (from the date of the conversation) accepting Art Walk's exempt
9 status and providing instructions regarding how to revive Art Walk's corporate status with the
10 Secretary of State. Again, I was not informed about any other issues that had to be addressed
11 before Art Walk's status could be revived.

12 7. As late as March 5, 2013, I believed that the only issue that needed to be
13 addressed in order for Art Walk's corporate status to be revived was the filing of the Form
14 3500A. I was not informed and was not aware of any other reason for the suspension of Art
15 Walk's corporate powers. I believed that Art Walk had taken the necessary steps to resolve the
16 issue that was the cause for Art Walk's suspension, and that administrative delays beyond Art
17 Walk's control were responsible for its continued status as a suspended corporation.

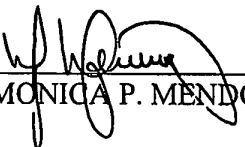
18 8. On March 6, 2013, I received from Art Walk's counsel, Robyn C. Crowther, a
19 copy of a March 4, 2013 form from the Franchise Tax Board that stated that Art Walk had to take
20 certain additional steps before its corporate powers could be revived. (Ms. Crowther had
21 received the copy of this form directly from the Franchise Tax Board.) This form states that Art
22 Walk also must file a Form 199 ("Exempt Organization Annual Information Return") or Form
23 199N ("Annual Electronic Filing Requirement for Small Tax-Exempt Organizations (California
24 e-Postcard)") for 2009, 2010 and 2012, and pay certain penalties totaling \$183.77. A true and
25 correct copy of this form is attached as Exhibit 3.

26 9. Art Walk received a similar form from the Franchise Tax Board (also dated March
27 4, 2013) that showed that Art Walk only needed to submit a Form 199 or Form 199N for 2010
28 and 2012 and did not owe any penalties. A true and correct copy of this second form is attached

1 hereto as Exhibit 4. Setting aside these discrepancies, this was the first time that I was informed
2 of any such additional issues that Art Walk needed to address in order to have its corporate
3 powers revived despite my prior telephone conversations with representatives of the Franchise
4 Tax Board.

5 10. I understand that, because it is in litigation, Art Walk may be able to use a process
6 (called a "walk-through revivor") to expedite the restoration of its corporate powers. I am in the
7 process of completing the necessary documents so that Art Walk can schedule an appointment to
8 use this expedited process, and I expect that to happen sometime within the next two weeks.

9 I declare under the penalty of perjury under the laws of the State of California and the
10 laws of the United States that the foregoing is true and correct and that this Declaration was
11 executed on March 13, 2013, at Burbank, California.

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14 MONICA P. MENDOZA
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DECLARATION OF JOE E. MOLLER

03 / 13 / 2013

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1 delays beyond Art Walk's control were responsible for its continued status as a suspended
2 corporation.

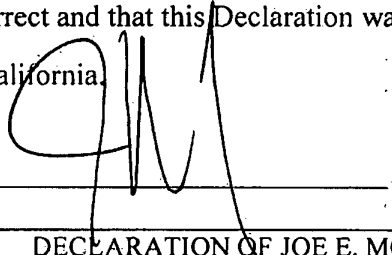
3 5. After entry of the Court's February 26, 2013 order, Art Walk (through the efforts
4 of its counsel and Ms. Mendoza) redoubled its efforts to find out why its corporate powers were
5 not yet revived. On March 6, 2013, I received from Art Walk's counsel, Robyn C. Crowther, a
6 copy of a March 4, 2013 form from the Franchise Tax Board that listed certain additional steps
7 before its corporate powers could be revived. (Ms. Crowther had received the copy of this form
8 directly from the Franchise Tax Board.) This form states that Art Walk also must file a Form
9 199 ("Exempt Organization Annual Information Return") or Form 199N ("Annual Electronic
10 Filing Requirement for Small Tax-Exempt Organizations (California e-Postcard)") for 2009,
11 2010 and 2012, and pay certain penalties totaling \$183.77. A true and correct copy of this form
12 is attached as Exhibit 3.

13 6. Art Walk later received a second March 4, 2013 form from the Franchise Tax
14 Board that stated that it only needed to file a Form 199 or Form 199N for the years 2010 and
15 2012, and did not owed any penalties. A true and correct copy of this second form is attached
16 hereto as Exhibit 4.

17 7. To my knowledge, this was the first time that Art Walk received any notification
18 of these additional issues despite having submitted the Form 3500A more than four months
19 earlier.

20 8. On March 6, 2013, I learned for the first time that, because it is in litigation, Art
21 Walk may be able to use a process (called a "walk-through revivor") to expedite the restoration
22 of its corporate powers. I have asked Ms. Mendoza to complete the necessary documents so that
23 I can schedule an appointment to use this expedited process, and I expect that to happen
24 sometime within the next two weeks.

25 I declare under the penalty of perjury under the laws of the State of California and the
26 laws of the United States that the foregoing is true and correct and that this Declaration was
27 executed on March 13, 2013, at LOS ANGELES, California.



1 PROOF OF SERVICE

2 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

3 At the time of service, I was over 18 years of age and **not a party to this action**. I am
4 employed in the County of Los Angeles, State of California. My business address is 725 South
Figueroa Street, 31st Floor, Los Angeles, California 90017-5524.

5 On March 13, 2013, I served true copies of the following document(s) described as
6 **NOTICE OF MOTION AND MOTION BY DEFENDANT DOWNTOWN LOS ANGELES**
7 **ART WALK, INC. FOR RECONSIDERATION OF ORDER GRANTING PLAINTIFFS'**
8 **EX PARTE APPLICATION TO STRIKE ART WALK'S DEMURRER AND TO**
9 **PROHIBIT ART WALK'S COUNSEL FROM APPEARING ON ART WALK'S BEHALF;**
10 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF;**
11 **DECLARATIONS OF ROBYN C. CROWTHER, MONICA P. MENDOZA AND JOE E.**
12 **MOLLER AND EXHIBITS** on the interested parties in this action as follows:

13 Ryan D. Saba, Esq.
14 Jonathan S. Dennis, Esq.
ROSEN SABA, LLP
468 North Camden Drive, Third Floor
Beverly Hills, CA 90210

Carmen A. Trutanich, Esq.
Anthony M. Miera, Esq.
Los Angeles City Attorney's Office
200 North Main Street, City Hall East
6th Floor
Los Angeles, CA 90012

15 Attorneys for Plaintiffs,
16 Jimmy Vasquez and Natasha Vasquez
Phone: (310) 285.1727
17 Facsimile: (310) 285.1728

Attorneys for Defendant,
City of Los Angeles
Phone: (213) 978.6943
Facsimile: (213) 978.8789

18 **BY MAIL:** I enclosed the document(s) in a sealed envelope or package addressed to the persons
19 at the addresses listed in the Service List and placed the envelope for collection and mailing,
following our ordinary business practices. I am readily familiar with Caldwell Leslie &
20 Proctor, PC's practice for collecting and processing correspondence for mailing. On the same day
that the correspondence is placed for collection and mailing, it is deposited in the ordinary course
21 of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

22 I declare under penalty of perjury under the laws of the State of California that the
23 foregoing is true and correct.

24 Executed on March 13, 2013, at Los Angeles, California.

25 
26 Selena Westmoreland
27
28

03/13/2013

CALDWELL
LESLIE &
PROCTOR